

House Engrossed Senate Bill

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

CHAPTER 101

## **SENATE BILL 1251**

AN ACT

AMENDING SECTIONS 12-570 AND 46-455, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-433; RELATING TO ADULT PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-570, Arizona Revised Statutes, is amended to  
3 read:

4 12-570. Malpractice settlement or award reporting; civil  
5 penalty; definition

6 A. If a medical malpractice action OR AN ACTION BROUGHT UNDER SECTION  
7 46-455 AGAINST A NURSING CARE INSTITUTION is settled or a court enters a  
8 monetary judgment:

9 1. The professional liability insurers shall provide the defendant's  
10 health profession regulatory board with all information required to be filed  
11 with the national practitioner data bank pursuant to public law 99-660. IN  
12 THE CASE OF AN ACTION BROUGHT UNDER SECTION 46-455 AGAINST A NURSING CARE  
13 INSTITUTION, THE INFORMATION SHALL BE PROVIDED TO THE DEPARTMENT OF HEALTH  
14 SERVICES.

15 2. The plaintiff's attorney shall provide the defendant's health  
16 profession regulatory board, OR, IN THE CASE OF AN ACTION BROUGHT AGAINST A  
17 NURSING CARE INSTITUTION, THE DEPARTMENT OF HEALTH SERVICES, with the notice  
18 ~~required under~~ DESCRIBED IN subsection B of this section, a copy of the  
19 complaint and a copy of either the agreed terms of settlement or the  
20 judgment. The attorney shall provide this notice and these documents within  
21 thirty days after a settlement is reached or a judgment is entered.

22 B. The notice required by subsection A of this section shall contain  
23 the following information:

- 24 1. The name and address of each defendant.  
25 2. The name, date of birth and address of each plaintiff.  
26 3. The date and location of the occurrence which created the claim.  
27 4. A statement specifying the nature of the occurrence resulting in  
28 the malpractice action.

29 5. A copy of all expert witness depositions, a transcript of all  
30 expert witness court testimony or a written evaluation of the case by an  
31 expert witness.

32 C. The notice required by subsection A of this section is not  
33 discoverable and not admissible as evidence.

34 D. An attorney who does not supply the information required by  
35 subsections A and B of this section within thirty days after the notice of  
36 settlement or judgment is due under subsection A of this section is subject  
37 to a civil penalty of five hundred dollars.

38 E. A confidentiality clause in a settlement agreement does not apply  
39 to the reporting requirements of this section.

40 F. For the purposes of this section, "health profession regulatory  
41 board" has the same meaning prescribed in section 32-3201.

1       Sec. 2. Title 36, chapter 4, article 2, Arizona Revised Statutes, is  
2 amended by adding section 36-433, to read:

3       36-433. Receipt of report and complaint; investigation

4       ON RECEIPT OF A NOTICE PURSUANT TO SECTION 12-570 AND A COPY OF A  
5 COMPLAINT AS PROVIDED IN SECTION 12-570, THE DEPARTMENT MAY INITIATE AN  
6 INVESTIGATION INTO THE MATTER TO DETERMINE IF THE LICENSEE IS IN VIOLATION OF  
7 THE STATUTES OR RULES GOVERNING LICENSURE.

8       Sec. 3. Section 46-455, Arizona Revised Statutes, is amended to read:

9       46-455. Permitting life or health of an incapacitated or  
10 vulnerable adult to be endangered by neglect;  
11 violation; classification; civil remedy; definition

12       A. A person who has been employed to provide care, who is a de facto  
13 guardian or de facto conservator or who has been appointed by a court to  
14 provide care to an incapacitated or vulnerable adult and who causes or  
15 permits the life of the adult to be endangered or that person's health to be  
16 injured or endangered by neglect is guilty of a class 5 felony.

17       B. An incapacitated or vulnerable adult whose life or health is being  
18 or has been endangered or injured by neglect, abuse or exploitation may file  
19 an action in superior court against any person or enterprise that has been  
20 employed to provide care, that has assumed a legal duty to provide care or  
21 that has been appointed by a court to provide care to such incapacitated or  
22 vulnerable adult for having caused or permitted such conduct. A physician  
23 licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed  
24 pursuant to title 32, chapter 7, a registered nurse practitioner licensed  
25 pursuant to title 32, chapter 15 or a physician assistant licensed pursuant  
26 to title 32, chapter 25, while providing services within the scope of that  
27 person's licensure, is not subject to civil liability for damages under this  
28 section unless either:

29       1. At the time of the events giving rise to a cause of action under  
30 this section, the person was employed or retained by the facility or  
31 designated by the facility, with the consent of the person, to serve the  
32 function of medical director as that term is defined or used by federal or  
33 state law governing a nursing care institution, an assisted living center, an  
34 assisted living facility, an assisted living home, an adult day health care  
35 facility, a residential care institution, an adult care home, a skilled  
36 nursing facility or a nursing facility.

37       2. At the time of the events giving rise to a cause of action under  
38 this section, all of the following applied:

39       (a) The person was a physician licensed pursuant to title 32, chapter  
40 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered  
41 nurse practitioner licensed pursuant to title 32, chapter 15 or a physician  
42 assistant licensed pursuant to title 32, chapter 25.

43       (b) The person was the primary provider responsible for the medical  
44 services to the patient while the patient was at one of the facilities listed  
45 in ~~subsection B~~, paragraph 1 of this ~~section~~ SUBSECTION.

1 C. Any person who was the primary provider of medical services to the  
2 patient in the last two years before it was recommended that the patient be  
3 admitted to one of the facilities listed in subsection B, paragraph 1 of this  
4 section is exempt from civil liability for damages under this section.

5 D. For the purposes of this section, primary provider does not include  
6 a consultant or specialist as listed in subsection B, paragraph 2,  
7 subdivision (a) of this section who is requested by the primary provider to  
8 provide care to the patient for whom the primary provider is responsible,  
9 unless that consultant or specialist assumes the primary care of the patient.

10 E. The state may file an action pursuant to this section on behalf of  
11 those persons endangered or injured to prevent, restrain or remedy the  
12 conduct described in this section.

13 F. The superior court has jurisdiction to prevent, restrain and remedy  
14 the conduct described in this section, after making provision for the rights  
15 of all innocent persons affected by such conduct and after a hearing or  
16 trial, as appropriate, by issuing appropriate orders.

17 G. ~~Prior to~~ BEFORE a determination of liability, the orders may  
18 include, but are not limited to, entering restraining orders or temporary  
19 injunctions or taking such other actions, including the acceptance of  
20 satisfactory performance bonds, the creation of receiverships and the  
21 appointment of qualified receivers and the enforcement of constructive  
22 trusts, as the court deems proper.

23 H. After a determination of liability such orders may include, but are  
24 not limited to:

25 1. Ordering any person to divest himself of any direct or indirect  
26 interest in any enterprise.

27 2. Imposing reasonable restrictions, including permanent injunctions,  
28 on the future activities or investments of any person including prohibiting  
29 any person from engaging in the same type of endeavor or conduct to the  
30 extent permitted by the constitutions of the United States and this state.

31 3. Ordering dissolution or reorganization of any enterprise.

32 4. Ordering the payment of actual and consequential damages, as well  
33 as ~~punitive damages~~, costs of suit and reasonable attorney fees, to those  
34 persons injured by the conduct described in this section. THE COURT OR JURY  
35 MAY ORDER THE PAYMENT OF PUNITIVE DAMAGES UNDER COMMON LAW PRINCIPLES THAT  
36 ARE GENERALLY APPLICABLE TO THE AWARD OF PUNITIVE DAMAGES IN OTHER CIVIL  
37 ACTIONS. THE COURT MAY ORDER THE PAYMENT OF REASONABLE ATTORNEY FEES THAT DO  
38 NOT EXCEED TWO TIMES THE TOTAL AMOUNT OF COMPENSATORY DAMAGES THAT ARE  
39 AWARDED IN THE ACTION, EXCEPT THAT THE COURT MAY AWARD ADDITIONAL ATTORNEY  
40 FEES IN CONNECTION WITH THE ACTION AFTER THE COURT HAS REVIEWED AND APPROVED  
41 A REQUEST FOR ADDITIONAL ATTORNEY FEES TO THE PLAINTIFF.

42 5. Ordering the payment of all costs and expenses of the prosecution  
43 and investigation of the conduct described in this section, civil and  
44 criminal, incurred by the state or county as appropriate to be paid to the

1 general fund of this state or the county which THAT incurred such costs and  
2 expenses.

3 I. A defendant convicted in any criminal proceeding is precluded from  
4 subsequently denying the essential allegations of the criminal offense of  
5 which he was convicted in any civil proceeding. For the purposes of this  
6 subsection, a conviction may result from a verdict or plea, including a plea  
7 of no contest.

8 J. A person who files an action under this section shall serve notice  
9 and one copy of the pleading on the attorney general within thirty days after  
10 the action is filed with the superior court. The notice shall identify the  
11 action, the person and the person's attorney. Service of the notice does not  
12 limit or otherwise affect the right of this state to maintain an action under  
13 this section or intervene in a pending action nor does it authorize the  
14 person to name this state or the attorney general as a party to the  
15 action. Upon receipt of a complaint the attorney general shall notify the  
16 appropriate licensing agency.

17 K. The initiation of civil proceedings pursuant to this section shall  
18 be commenced within two years after actual discovery of the cause of action.

19 L. EXCEPT FOR THE STANDARD OF PROOF PROVIDED IN SUBSECTION H,  
20 PARAGRAPH 4 OF THIS SECTION, the standard of proof in civil actions brought  
21 pursuant to this section is the preponderance of the evidence.

22 M. Except in cases filed by a county attorney, the attorney general  
23 may, upon timely application, MAY intervene in any civil action or proceeding  
24 brought under this section if the attorney general certifies that in his  
25 opinion the action is of special public importance. Upon intervention, the  
26 attorney general may assert any available claim and is entitled to the same  
27 relief as if the attorney general had instituted a separate action.

28 N. In addition to the state's right to intervene as a party in any  
29 action under this section, the attorney general may appear as a friend of the  
30 court in any proceeding in which a claim under this section has been asserted  
31 or in which a court is interpreting section 46-453 or this section.

32 O. A civil action authorized by this section is remedial and not  
33 punitive and does not limit and is not limited by any other civil remedy or  
34 criminal action or any other provision of law. Civil remedies provided under  
35 this title are supplemental and not mutually exclusive.

36 P. The cause of action or the right to bring a cause of action  
37 pursuant to subsection B or E of this section shall not be limited or  
38 affected by the death of the incapacitated or vulnerable adult.

39 Q. ~~IN~~ FOR THE PURPOSES OF this section, "enterprise" means any  
40 corporation, partnership, association, labor union, or other legal entity, or  
41 any group of persons associated in fact although not a legal entity, which is  
42 involved with providing care to an incapacitated or vulnerable adult.

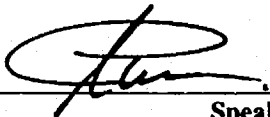
~~APPROVED BY THE GOVERNOR APRIL 18, 2005.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2005.~~

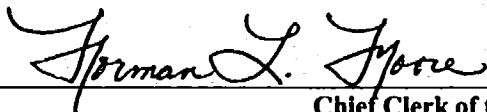
Passed the House April 4, 20 05

by the following vote: 46 Ayes,

10 Nays, 4 Not Voting



Speaker of the House

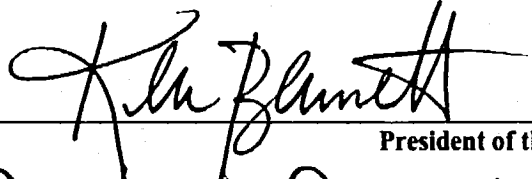


Chief Clerk of the House

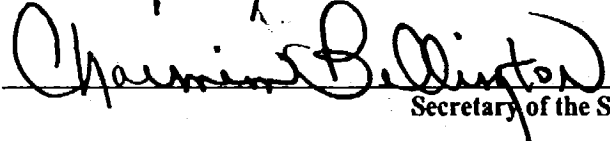
Passed the Senate February 22, 20 05

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting



President of the Senate



Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

           day of           , 20           ,

at            o'clock            M.

            
Secretary to the Governor

Approved this            day of

          , 20           ,

at            o'clock            M.

            
Governor of Arizona

S.B. 1251

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this            day of           , 20           ,

at            o'clock            M.

            
Secretary of State

**ON RECONSIDERATION**

Passed the House April 4, 2005,

by the following vote: 46 Ayes,

9 Nays, 5 Not Voting

[Signature]  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate \_\_\_\_\_, 20\_\_\_\_,

by the following vote: \_\_\_\_\_ Ayes,

\_\_\_\_\_ Nays, \_\_\_\_\_ Not Voting

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

S.B. 1251

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate April 12, 2005,

by the following vote: 28 Ayes,

2 Nays, 0 Not Voting

Klu Blumett  
President of the Senate  
Charmian Ballenger  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

12th day of April, 2005,

at 4:20 o'clock P. M.

Vernice K. Brewer  
Secretary to the Governor

Approved this 18 day of

April, 2005,

at 1:45 o'clock P. M.

J. B. Reynolds  
Governor of Arizona

S.B. 1251

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18 day of April, 2005,

at 4:42 o'clock P. M.

Vernice K. Brewer  
Secretary of State